

## VIRGINIA BOARD OF MEDICINE MINUTES

Friday, February 11, 2005

Department of Health Professions

Richmond, VA

### **CALL TO ORDER:**

The meeting of the Board convened at 8:20 a.m.

### **MEMBERS PRESENT:**

Thomas Leecost, DPM, President  
John Armstrong, MD  
Sandra Anderson Bell, MD  
Christine Ober Bridge  
Patrick Clougherty, MD  
Carol Comstock, RN  
Malcolm Cothran, MD, Vice President  
Alvin Edwards, M.Div., Ph.D.  
Suzanne Everhart, DO  
J. Thomas Hulvey, MD  
Gary P. Miller, MD  
Juan Montero, MD  
Robert T. Mosby, MD  
Jane Piness, MD  
Karen Ransone, MD  
Jerry Willis, DC, Secretary-Treasurer

### **MEMBERS ABSENT:**

Stephen Heretick, JD  
Gopinath Jadhav, MD

### **STAFF PRESENT:**

William L. Harp, MD, Executive Director  
Barbara Matusiak, MD, Medical Review Coordinator  
Kate Nobsch, Deputy Exec. Director of Practitioner Information  
Ola Powers, Deputy Executive Director of Licensure  
Karen Perrine, Deputy Executive Director of Discipline  
Robert Nebiker, Director, DHP  
Elaine Yeatts, DHP Senior Policy Analyst  
Emily Wingfield, Assistant Attorney General  
Colanthia Morton Opher, Recording Secretary

### **OTHERS PRESENT:**

Claudette Dalton, MD, Associate Dean, UVA  
Dianne Reynolds-Cane, MD, Past President, Virginia Board of Medicine  
Harry Beaver, MD, Past President, Virginia Board of Medicine  
Brynne Potter, Commonwealth Midwives Alliance  
Deren Bader, DrPh, CPM, Commonwealth Midwives Alliance

## **ADOPTION OF AGENDA**

Dr. Leecost advised that there would be a deviation from the order of the printed agenda. Dr. Edwards moved to adopt the amended agenda. The motion was seconded and carried unanimously.

## **PUBLIC COMMENT**

Ms. Brynne Potter addressed the Board on behalf of the Commonwealth Midwives Alliance regarding SB1259, a bill that will require the Board of Medicine to license Certified Professional Midwives (CPM). Ms. Potter stated that the goal of her organization, as well as supportive consumers, is to provide access to home birth services. Ms. Potter stated that, along with requiring practice standards, the bill is intended to reduce the amount of physician liability vis-à-vis midwife home deliveries and increase the collaborative opportunities between midwives and physicians in hospitals.

Dr. Cothran voiced several concerns from his colleagues, including that there may be some individuals practicing midwifery that are not licensed and the indication that anyone can practice this profession without benefit of licensure or regulation. Dr. Cothran also inquired about the situation of a midwife that does not find a physician to agree to provide backup. He also asked about the liability of practitioners who do not agree to back up a midwife but may become involved in providing emergency services.

Ms. Potter explained that, from a legal status, Certified Professional Midwives are currently not licensed in the Commonwealth. CPMs primarily provide out-of-hospital based care and are not classified as nurse practitioners or regulated as such. CPMs will become licensed under the new law, that passed the 2005 General Assembly and was signed by the Governor, as "licensed midwives" and regulated solely by the Board of Medicine, not the Joint Boards of Medicine and Nursing--as CNMs and Nurse Practitioners currently are. Ms. Potter explained that registered lay midwives with no requirement of formal training or certification were permitted to practice from 1917 until 2002 by the Department of Health. In addressing the liability concern, Ms. Potter pointed out that the proposed language states that any licensed practitioner that provides care subsequent to a certified professional midwife's care is only responsible for the care that is provided and not liable for problems not of their making. Ms. Potter also stated that midwives are currently not required to carry malpractice and because malpractice is tied to licensure; quotes for premiums can not be obtained until licensure is established. Ms. Potter also addressed the concern that obstetricians do not support this measure. Ms. Potter addressed the educational concern and stated that there was a minimum of one year, mostly contact hours, exams and continuing education to become a Certified Professional Midwife.

## **APPROVAL OF THE OCTOBER 14, 2004 MINUTES**

Dr. Bell moved to approve the minutes of the Board dated October 14, 2004. The motion was seconded. Dr. Armstrong asked that page 4, paragraph 5 be amended to say, "As the

timely and accurate completion of death certificates is an important medical function, Dr. Armstrong suggests that a brief one page educational module accompany each death certificate. The module would address the most common questions and errors in completing death certificates.” Dr. Bell withdrew her motion and moved the minutes be approved with the amendment as noted. The motion was seconded and carried.

## **REGULATORY ACTIONS**

Ms. Yeatts provided an updated summary and discussion of the bills pertaining to the Board. Mr. Nebiker expanded on HB2429, advising that Kenny Walker, MD worked on the pilot program for 2 years. This bill will provide, under certain circumstances, unsolicited reports to physicians of individuals with apparent excessive prescriptions from different physicians and different pharmacies. Mr. Nebiker stated this program expansion should be implemented within 12 months. Mr. Nebiker also advised that this program is federally funded and funds will be available for continuing medical education and notification to physicians.

Ms. Yeatts pointed out that HB2524 is an effort supported by the Medical Society of Virginia that excludes from the definition of “compounding” the mixing, diluting, or reconstituting of drugs for the purpose of administration to a patient when performed by a practitioner of medicine or osteopathy. If this is enacted, the Board would have to adopt emergency regulations relating to the condition of the practice and the conditions it must meet for compounding within physician practices. Ms. Yeatts explained that this measure would give the Board the power to inspect those practices and receive investigative reports that could potentially lead to disciplinary actions.

## **REVIEW OF REGULATORY ACTIONS**

Ms. Yeatts advised that there is currently no regulatory action to be taken.

Ms. Yeatts then reviewed the chart noting the status of those regulatory actions the Board has taken within the last couple of months. Ms. Yeatts advised that the comment period for ethical standards regulations (85-20-25 et seq) closed on January 28, 2005 and recommended that the Ad Hoc Committee on Ethics be reconvened to review the public comment prior to the Legislative Committee, Advisory Boards, etc. Dr. Leecost requested that the members of the ad hoc committee reconvene with Dr. Cothran serving as Chair for the purpose of reviewing public comment. This meeting will be scheduled for February 25, 2005.

## **REPORT OF OFFICER AND EXECUTIVE DIRECTOR**

### **President**

Dr. Leecost reported that he attended the Healthy Virginia Conference and stated that Virginia is at the national average with overall healthcare, below the national average for pediatric care, and above the national average for infant/immunization care.

Dr. Leecost also advised that he attended the Nebraska-Virginia Alliance Conference which has been developed to assist those interested in entering the healthcare profession with education and research.

#### **Vice-President and Secretary-Treasurer**

No report.

#### **Executive Director**

##### **CPEP**

Dr. Harp reviewed the promotional information from the Center for Personalized Education Program (CPEP) noting that this was not an endorsement for the program but one of four that the Board is aware of around the nation to be considered as a reputable evaluation center for competency.

##### **Finances**

Dr. Harp discussed the revenue and expenditures summary noting that the Board is well within the budget.

##### **Health Practitioners' Intervention Program Statistics**

Dr. Harp briefly reviewed the report submitted noting that at the end of 2004 the Board of Medicine had 121 licensees in the program. He also informed the Board that the new HPIP Liaison is Ms. Peggy Call.

##### **Guidance Document on Prevention of Transmission of HIV and Hepatitis B**

Dr. Harp advised that Jack Armstrong, MD, Infectious Disease specialist on the Board, was asked to review the existing guidance document and suggest any revisions to bring it current to today's practice.

Dr. Armstrong advised that the major revision made affects those practitioners with risk factors for blood-borne diseases. He stated that the document suggests that those practitioners would be expected to be tested for those diseases if they perform exposure-prone procedures, as opposed to saying all physicians should be tested.

Dr. Edwards moved to accept the updated guidance document. The motion was seconded and carried unanimously.

##### **Approach to Out-of-State Reports**

Dr. Harp advised that this issue came out of the Legislative Committee in response to discussion from staff about the interpretation of §54.1-2901.15 about out-of-state consultants and their interaction with Virginia-based practitioners or patients. He stated that the Legislative Committee suggested that an ad hoc committee be formed to explore this issue.

Dr. Harp advised the Delegate Armstrong submitted a bill that would have addressed this issue. The bill was withdrawn with the understanding that the Board of Health Professions will do a study of practice across state lines. This will obviate the need for an ad hoc committee to be formed under the Board of Medicine.

Mr. Nebiker advised the Board of Health Professions has done reports on telehealth in the past and the major concern is practicing across state lines more than telehealth. Dr. Nebiker also noted that the concern is among pathologists and radiologists because of the increasing amount of outsourcing to other countries, and the possible lack of accountability for the reports being provided.

### **Supervisory Relations of Physicians with Physician Assistants**

Dr. Harp reported that the Executive Committee suggested an avenue to assist physicians in their relationship with their physician assistants. Dr. Harp advised that the Board would be mailing to all supervising physicians a letter highlighting key information and the laws and regulations that affect their responsibility as a supervisor. He advised that the Virginia Academy of Physician Assistants expressed their willingness in disseminating this information.

### **Board Brief Update**

Dr. Harp advised that approximately 5% or less viewed the latest board briefs online from October-December 2004. After a brief discussion, the board agreed to return to the paper format.

### **FSMB-CDC Project on Emergency Contact Information**

Dr. Harp reported that the Board of Medicine and five other state boards were asked to participate in a pilot project of FSMB to develop a list of contact information of doctors and other providers in the event of a national catastrophe. Dr. Harp informed the Board that due to previous efforts, this data is currently ready to be sent once approval is given.

### **FSMB Journal Article on Virginia Sanctions Reference Project and Roundtable on Sanctions Reference**

Dr. Harp stated that Neal Kauder and Elizabeth Carter, Executive Director of the Board of Health Professions, composed an article on the sanctions reference project that was recently published in FSMB's Journal. Dr. Harp advised that the article generated tremendous interest and as a result Mr. Kauder will be a featured presenter at FSMB's roundtable on February 17, 2005.

### **Prescribing Conference for Prescribers and Pharmacists**

Dr. Harp advised that DHP, Board of Pharmacy and Board of Medicine will be coordinating an educational day on controlled substances for prescribers and pharmacists to address the problems that continuously occur. He advised that this program should be held in April– May with 6 hours of Type 1 CE available.

### **Urban Institute Study**

Dr. Harp advised that staff of the Board of Medicine, Department of Health Professions and the Attorney General's Office will be meeting February 22, 2005 with Randy Bovbjerg, Principal Research Associate for the Health Policy Center at The Urban Institute in Washington, DC as part of a project that HHS is conducting on six state boards and their processes, with emphasis on the disciplinary function.

### **Osteopathic Medical Examiners Visit**

Dr. Harp advised that this event will be held in Philadelphia on Friday, April 1<sup>st</sup> or 22<sup>nd</sup> to review the NBOME and the COMLEX process.

Dr. Harp also advised that Mr. Heretick will be the board member attending Federation's Summit on Maintenance of Competency March 2005.

### **COMMITTEE AND ADVISORY BOARD REPORTS**

Ms. Comstock moved to accept en bloc the minutes of the Executive Committee, Legislative Committee, Committee of the Joint Boards of Nursing and Medicine, Advisory Board on Physician Assistants, Advisory Board on Occupational Therapy, and the Advisory Board on Radiological Technology. The motion was seconded and carried.

### **OTHER REPORTS**

#### **Board of Health Professions**

Minutes were provided in the agenda package. Dr. Montero had no other items to report.

#### **Assistant Attorney General**

Ms. Wingfield advised there was one case being petitioned in the Supreme Court and one being appealed at the Circuit Court level. She also advised that a previous case was dismissed by the Circuit Court and the order now requires the individual to obtain permission from the courts before suing the Board again.

#### **Department of Health Professions**

Mr. Nebiker informed the Board that the Board of Health Professions will be conducting a study to explore the practice of naturopathic physicians and possible licensure requirements.

#### **Podiatry Report**

No report.

Dr. Harp advised the Virginia Podiatric Medical Association has contacted the Board regarding podiatric radiological technologist-limited continuing education. Their inquiry was regarding if VPMA would be considered an entity to provide continuing education to these licensees. VAC 85-101-150(E) would appear to be inclusive in this regard.

#### **Chiropractic Report**

No report.

#### **Nominating Committee Report**

Dr. Leecost appointed Dr. Edwards, Dr. Willis and Dr. Bell to serve on the Nominating Committee to develop a slate of officers in July 2005.

#### **Credentials Report**

Ms. Powers reported that the Credentials Committee would be meeting the afternoon of February 11, 2005 with three cases to be heard for determination of licensure along with other business items.



### **Practitioners Information Report**

Ms. Nosbisch presented a PowerPoint overview of Practitioner Information. She noted that to date, this presentation has been given to several hospitals. Ms. Nosbisch noted that 80%-81% of the profiles have been completed online. She stated that there will be a 2% audit done this year.

### **Discipline Report**

Ms. Perrine reviewed the statistics of the open and closed cases as of February 2, 2005 noting the vast majority being closed deal with profiling matters. Ms. Perrine asked the Board to consider the use of an agency subordinate to address profiling informal conferences.

Dr. Leecost encouraged the Board members to commit a day per quarter to review cases in the Board office in an effort to help reduce the case load.

### **Solicitation of Comments on DEA Interim Policy**

Dr. Harp advised that in 2004 the policy division of the Drug Enforcement Division (DEA), via their website attempted to address through FAQs the use of controlled substances for the treatment of chronic pain. The FAQs have since been removed from the website as they were deemed not to represent official DEA policy. An interim policy statement was placed on the website in November 2004. The DEA is now soliciting comments about the new policy statement. Dr. Harp pointed out that this is the opportunity for the Board to submit comments regarding how these policies have or may affect the practice of medicine.

Dr. Leecost requested that the comments be forwarded to Dr. Harp for compilation and then submitted to the FSMB.

Dr. Armstrong suggested that clarification of writing multiple prescriptions on the same day be addressed in an article in the next published board briefs.

### **FSMB Annual Meeting Attendance**

Dr. Leecost advised that he and Dr. Harp would be attending the FSMB Annual meeting in Dallas, TX May 12-15, 2005. Dr. Edwards, Ms. Comstock, Dr. Mosby, and Dr. Hulvey indicated their interest in attending as well.

### **FSMB Regional Meetings on the Treatment of Pain**

Dr. Harp advised that Dr. Edwards and Dr. Cothran will be attending one of the regional meetings. Dr. Clougherty indicated his interest in attending as well.

### **Proposed Resolution from the Vermont Board of Osteopathic Physicians and Surgeons**

The Board did not vote on guidance to Dr. Leecost on this matter.

### **Proposed Date for Retreat**

Dr. Leecost reported that the last retreat held in Charlottesville was successful and very informative and he would like one scheduled before the summer. Dr. Harp advised that this

would be a good opportunity for new members to obtain additional training, discuss topics concerning Board business, processes, policy matters, etc.

### **Announcements**

Dr. Harp advised that he, Dr. Matusiak and Faye Lemon, Executive Director, Enforcement met to discuss the disciplinary process and determined that if a board member was included on the front end to review the incoming complaints, the investigative process could be focused and most likely expedited. Dr. Leecost asked for everyone's cooperation in making this happen.

Next scheduled meeting: March 11-12, 2005 for Discipline Only

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Thomas Leecost, DPM  
President

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William L. Harp, M.D.  
Executive Director

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Colanthia Morton Opher  
Recording Secretary